

FEDERAL COMMUNICATIONS COMMISSION

DA NO. 16-1120

CC DOCKET NO. 02-6

MATTER OF: WESLEYAN ACADEMY
PETITION FOR RECONSIDERATION

NOTICE OF APPEARANCE

TO THE HONORABLE COMMISSION:

COMES NOW Wesleyan Academy through the undersigned Attorney, and respectfully states and alleges as follows:

On this date, the undersigned attorney, Husmail Figueroa, undertakes legal representation of Wesleyan Academy in the above captioned proceeding before this Honorable Commission.

WHEREFORE, for all of the above, Wesleyan Academy prays that the Commission take notice of all of the above, and serve notice of all further and subsequent communications regarding the above captioned proceeding to appearing counsel at the following address:

HUSMAIL FIGUEROA RÍOS
Attorney at Law
P.O. Box 505, Saint Just, PR 00978

CERTIFICATION OF NOTICE

I HEREBY CERTIFY, that on this even date, I have served notice of the instant NOTICE to:

Universal Service Administrative Company
Schools and Libraries Program - Correspondence Unit
30 Lanidex Plaza West, P.O. Box 685
Parsippany, NJ 07054-0685

SUBMITTED IN SAN JUAN, PUERTO RICO, on this date, October 30th, 2016

/s/:  HUSMAIL FIGUEROA RÍOS

HUSMAIL FIGUEROA RÍOS
Commonwealth of Puerto Rico
Attorney Registry RUA 16986
P.O. Box 505, Saint Just, PR 00978
Tel. & Fax: (787) 767-3383
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FEDERAL COMMUNICATIONS COMMISSION

DA NO. 16-1120

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MATTER OF: WESLEYAN ACADEMY
PETITION FOR RECONSIDERATION

MOTION FOR LEAVE TO FILE

TO THE HONORABLE COMMISSION:

COMES NOW Wesleyan Academy through the undersigned Attorney, and respectfully states and alleges as follows:

- 1) Before this Honorable Commission is matter pending the above captioned proceeding.
- 2) The Commission served Wesleyan Academy public notice of its decision to decline the Academy's appeal on September 30th, 2016. Accordingly, the time limit to file a PETITION FOR RECONSIDERATION expires on this date.
- 3) Notwithstanding the above, for good cause and due to logistical and budgetary constraints, Wesleyan Academy had been unable to retain the undersigned legal counsel until last Thursday, October 27, 2016.
- 4) The undersigned submits to the consideration of this Honorable Commission that he has examined the documentation provided to him by Wesleyan Academy in support for a PETITION FOR RECONSIDERATION and an eventual remand to USAC for consideration of the case on the merits, and has basis to believe that Wesleyan Academy has a strong likelihood of success of prevailing on such merits.
- 5) Nevertheless, and pursuant to 47 C.F.R. § 1.106 in its ¶ (F), the undersigned needs a short extension of time of not more than seven (7) calendar days to file a proper appellate brief with its accompanying subsidiary documentation in support of the aforementioned PETITION FOR RECONSIDERATION.
- 6) For the convenience of the Commission, and in support of the instant motion, Wesleyan Academy accompanies the same with sworn statements subscribed by the undersigned, as well as by administrative personnel from Wesleyan Academy.

PRAYER FOR RELIEF


WHEREFORE, for all of the above, Wesleyan Academy prays that the Commission take notice of all of the above, and pursuant to 47 C.F.R. § 1.106 in its ¶ (F) grant Wesleyan Academy leave to file the instant petition for reconsideration within a short extension of time of not more than seven (7) calendar days.

CERTIFICATION OF NOTICE

I HEREBY CERTIFY, that on this even date, I have served notice of the instant NOTICE to:

Universal Service Administrative Company
Schools and Libraries Program - Correspondence Unit
30 Lanidex Plaza West, P.O. Box 685
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SUBMITTED IN SAN JUAN, PUERTO RICO, on this date, October 30th, 2016


/s/: HUSMAIL FIGUEROA RÍOS

HUSMAIL FIGUEROA RÍOS

Commonwealth of Puerto Rico
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Tel. & Fax: (787) 767-3383
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e-mail: husmailf@yahoo.com

FEDERAL COMMUNICATIONS COMMISSION
DA NO. 16-1120
CC DOCKET NO. 02-6

28 U.S.C.A. § 1746 AFFIDAVIT
IN SUPPORT OF PETITION TO RECONSIDER
PURSUANT TO 47 C.F.R. § 1.106

Affiant Mrs. Inebelle Robles, being duly sworn, deposes and states:

1. My name is Inebelle Robles, I have personal knowledge of the facts stated in this Affidavit and those facts are, to my knowledge, true and correct. I make this Affidavit in support of the PETITION TO RECONSIDER proceeding number DA NO. 16-1120 CC DOCKET NO. 02-6.
2. I am Admissions Clerk for Wesleyan Academy, organization that appears as applicant and petitioner before the Federal Communications aforementioned proceedings.
3. Appearing as counsel on behalf of Wesleyan Academy is Husmail Figueroa Ríos, an attorney duly licensed to practice in the Commonwealth of Puerto Rico, and a member in good standing of the Bar of said Court.
4. Wesleyan Academy has provided the aforementioned legal counsel with several documents, with the intent that they be used in support in the instant Motion to Reconsider, namely, its 2015-16 MASTER CALENDAR, all documents filed with USAC regarding the instant proceeding, all contracts entered into by Wesleyan Academy and its Information Technology providers for all times relevant to the instant proceeding, the Vendor Evaluation Matrix related to the instant proceeding, among others.
5. The AFOREMENTIONED 2015-16 MASTER CALENDAR, as is customary for most educational institutions within the Puerto Rico jurisdiction, operates under a school year typically running from August to May.
6. Accordingly, on or around May 9th, 2016, Wesleyan Academy was winding down most of its routinely educational and administrative functions, as its students were entering the last days of formal instruction, and commencing the period of final examinations.
7. I, Mrs. Inebelle Robles had been assigned to a role of development of public relations within the Academy for the August, 2015 to May, 2016 school year.

8. During May, 2016 Wesleyan Academy coincidentally underwent a personnel reorganization, whereby my prior role as a public relations practitioner was obliterated.
9. Consequently, I was reassigned to the Admissions Clerk role, and said role entailed that I move to a new and different physical location.
10. During and throughout May, 2016, Wesleyan Academy engaged in construction, refurbishing and remodeling efforts of its facilities, namely the new office space to be occupied by me in my newly assigned role for the 2016 - 2017 school year.
11. During and throughout May, 2016, my belongings and equipment were packed and stored as a consequence of the aforementioned construction, refurbishing and remodeling efforts.
12. As is required by my terms of employment, I completed my duties for the 2015 - 2016 school year during the month of May, 2006, and did not return to Wesleyan Academy's premises until the start of the 2016 - 2017 school year, or in August, 2016.
13. Notwithstanding the alteration of my responsibilities during the transitional period of May, 2016, and inadvertently for Wesleyan Academy, I continued to be the sole designated point of contact for all communications, events and transactions executed between USAC and Wesleyan Academy.
14. The method of communication employed by USAC to transact business with Wesleyan Academy during said time period was solely through regular US Postal Service.
15. On or around May 9th, 2016, USAC served Wesleyan Academy with notice of a document entitled "*Funding Commitment Adjustment Report for Form 471 - Application Number: 871807.*"
16. Said document advised Wesleyan Academy, *inter alia*, that USAC had detected in the referenced application several instances of errors, namely:
 - (1). That Wesleyan Academy selected a service provider prior to the expiration of 28-day posting period;
 - (2). That Wesleyan Academy did not have a contract in place at the time of submission of the FCC Form 471;
 - (3). That any contracts entered into and disclosed by Wesleyan Academy as part of the application process, did not meet the requirements of Puerto Rico state procurement laws.
17. I respectfully submit to the consideration of this Honorable Commission that, notwithstanding the above, the errors noted

above were not committed by Wesleyan Academy, and that quite contrarily:

- (1). Wesleyan Academy selected a service provider right at the onset of the expiration of 28-day posting period, or right at the earliest date it was allowed to execute said contract;
- (2). Wesleyan Academy did in fact have a contract in place at the time of submission of the FCC Form 471;
- (3). Any contracts entered into and disclosed by Wesleyan Academy as part of the application process, did in fact meet and were fully compliant with the requirements of Puerto Rico state procurement laws.

18. Simultaneously, and while all of the above transpired towards the end of the school year during May, 2016, and as part of its ministerial Audit functions, USAC had been intermittently requesting documentation from Wesleyan Academy in regards to the telecommunication services provider here at issue, Telnet Wireless Broadband, Inc.

19. Eventually, and now with the benefit of hindsight, we have been able to ascertain that USAC's confusion in evaluating Wesleyan Academy's supporting documents as noted in the "*Funding Commitment Adjustment Report for Form 471 - Application Number: 871807*" communication, was undoubtedly triggered by the overlapping and persistent production of documents requests served by USAC upon Wesleyan Academy, on the one hand in support of transactions regarding FCC Form 471, while on the other and concurrently, in support of the Audit examination of Telnet Wireless Broadband, Inc.

20. Notwithstanding the fact that the aforementioned USAC communication was indeed delivered to Wesleyan Academy on or around May 15th, 2016, the same was inadvertently filed and stored with the rest of my office belongings to await my return to my duties at the start of the school year in August, 2016.

21. Almost immediately upon my return to Wesleyan Academy on August, 2016, and upon first becoming aware of the existence of the "*Funding Commitment Adjustment Report for Form 471 - Application Number: 871807*" communication, I diligently consulted and put USAC on notice of all of the above relevant facts, and proactively engaged Wesleyan Academy in what has become the instant appeal process and PETITION FOR RECONSIDERATION.

22. All of the above notwithstanding, and despite the cogent points submitted herewithin, and the overwhelming presence of good-faith on our part and mitigating factors as set forth above, and regardless of all of our most diligent best efforts to bring the present issue to rest, to no fault of our own or to that of Wesleyan Academy's, USAC has been estopped, both by law and by

regulation, from considering our arguments as laid out and articulated above.

In San Juan, Puerto Rico, on this date, October 30th, 2016

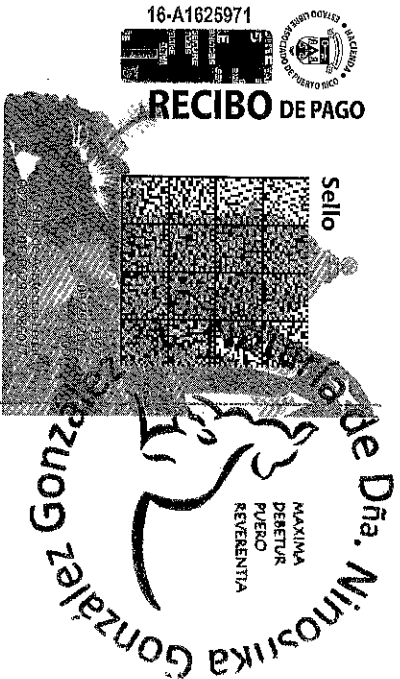
Inebelle Robles
Mrs. Inebelle Robles

AFFIDÁVIT NÚM. 51

Sworn to and subscribed before me by Mrs. Inebelle Robles, whom I know personally.

In San Juan, Puerto Rico, on this date, October 30th, 2016

Ninoshka González
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FEDERAL COMMUNICATIONS COMMISSION

DA NO. 16-1120

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28 U.S.C.A. § 1746 COUNSEL AFFIDAVIT
IN SUPPORT OF PETITION TO RECONSIDER
PURSUANT TO 47 C.F.R. § 1.106

Affiant Husmail Figueroa Ríos, being duly sworn, deposes and states:

1. My name is Husmail Figueroa Ríos, I have personal knowledge of the facts stated in this Affidavit and those facts are, to my knowledge, true and correct. I make this Affidavit in support of the PETITION TO RECONSIDER proceeding number DA NO. 16-1120 CC DOCKET NO. 02-6.
2. I appear as counsel on behalf of Wesleyan Academy, and am attorney duly licensed to practice in the Commonwealth of Puerto Rico, and am a member in good standing of the Bar of said Court.
3. Wesleyan Academy has provided me as their appearing legal counsel with several documents, with the intent that they be used in support in the instant Motion to Reconsider, namely, its 2015-16 MASTER CALENDAR, all documents filed with USAC regarding the instant proceeding, all contracts entered into by Wesleyan Academy and its Information Technology providers for all times relevant to the instant proceeding, the Vendor Evaluation Matrix related to the instant proceeding, among others.
4. Wesleyan Academy has also provided me with sworn statements by its two representatives in the instant proceeding, namely Headmaster Rev. Fernando J. Vázquez, and Admissions Clerk Inebelle Robles.
5. I have thoroughly reviewed the above documentation and sworn statements, and have also extensively interviewed both Rev. Vázquez and Mrs. Robles within the scope of the instant proceeding. Upon careful consideration, I find that their contentions are decidedly and overwhelmingly with legal merit and the utmost good-faith.
6. On or around May 9th, 2016, USAC served Wesleyan Academy with notice of a document entitled "*Funding Commitment Adjustment Report for Form 471 - Application Number: 871807.*"

7. Said document advised Wesleyan Academy, *inter alia*, that USAC had detected in the referenced application several instances of errors, namely:
 - (1). That Wesleyan Academy selected a service provider prior to the expiration of 28-day posting period;
 - (2). That Wesleyan Academy did not have a contract in place at the time of submission of the FCC Form 471;
 - (3). That any contracts entered into and disclosed by Wesleyan Academy as part of the application process, did not meet the requirements of Puerto Rico state procurement laws.
8. After my thorough and diligent review the above documentation as furnished to me by Wesleyan Academy, and after a careful examination of the sworn statements taken upon Wesleyan Academy's representatives, and in consideration of my interviews of both Rev. Vázquez and Mrs. Robles I respectfully submit to the consideration of this Honorable Commission that the errors as noted above by USAC were not committed by Wesleyan Academy, and that quite contrarily:
 - (1). Wesleyan Academy selected a service provider right at the onset of the expiration of 28-day posting period, or right at the earliest date it was allowed to execute said contract;
 - (2). Wesleyan Academy did in fact have a contract in place at the time of submission of the FCC Form 471;
 - (3). Any contracts entered into and disclosed by Wesleyan Academy as part of the application process, did in fact meet and were fully compliant with the requirements of Puerto Rico state procurement laws.
9. I also submit to the consideration of the Honorable Commission that I find overwhelming support for Wesleyan Academy's main prayer for relief under the instant proceeding, namely, that the "60-day" legislative and regulatory rule estopping USAC from considering the Academy's appeal be waived, that the instant proceeding be remanded to USAC, and that the Academy be allowed to submit additional documentation to the attention of USAC for resolution of all contentions on the merits.
10. I also submit to the consideration of the Honorable Commission that I find overwhelming support for Wesleyan Academy's alternative prayer for relief under the instant proceeding, namely, that it be granted leave and a brief extension of time of just seven (7) days to file a supplemental brief with an accompanying appendix of supporting documents, such that this Honorable Commission itself may address and issue a ruling upon all contentions before USAC on the merits.

In San Juan, Puerto Rico, on this date, October 30, 2016


Husmail Figueroa Ríos

AFFIDÁVIT NÚM. 52

Sworn to and subscribed before me by Husmail Figueroa Ríos,
whom I know personally.

In San Juan, Puerto Rico, on this date, October

30th, 2016


NINOSHKA GONZÁLEZ, ATTORNEY AT LAW

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RECIBO DE PAGO

